



U.S. Department of
Transportation
Office of the Secretary
of Transportation

The Inspector General

Office of Inspector General
Washington, D.C. 20590

June 14, 2005

The Honorable John Conyers, Jr.
Ranking Member
Committee on the Judiciary
U.S. House of Representatives

The Honorable James L. Oberstar
Ranking Member
Committee on Transportation and Infrastructure
U.S. House of Representatives

The Honorable Henry A. Waxman
Ranking Member
Committee on Government Reform
U.S. House of Representatives

Dear Congressmen Conyers, Oberstar, and Waxman:

By letter dated February 15, 2005, addressed to my office and the Inspector General of the Department of Justice (DOJ), you asked that we investigate our respective Department's roles in the classification and declassification of a 9/11 Commission report of the Federal Aviation Administration's (FAA) pre-9/11 knowledge of aviation threats—*herein referred to as the FAA monograph*. Also in your letter, you expressed concern regarding the length of time it took to deliver to the National Archives and Records Administration (NARA) a declassified version of the FAA monograph and why it was released publicly only after the presidential election.

Further, you asked that we determine whether the classification review of the FAA monograph followed applicable legal requirements governing prompt declassification of information. You requested that our investigation focus on any memoranda or emails between DOJ and the Department of Transportation (DOT) regarding the classification review of the FAA monograph, when the review of the monograph would be or should be completed, or any reference that review of the monograph should be delayed or slowed. We coordinated our investigation with DOJ's Office of Inspector General (OIG) and our findings are detailed below.

Background

The FAA monograph in question here consists of two parts and is the last in a series of three monographs/staff reports that Commission staff prepared separate from the “9/11 Commission Report.” The monographs address, in detail, subjects covered by the Commission's mandate. The first monograph is a Commission staff report concerning Terrorist Financing, while the second monograph is a staff report on Terrorist Travel.

The FAA monograph is the third monograph and is composed of two-parts: Part I is titled, “We Have Some Planes’: The Four Flights—a Chronology”, and Part II is titled “Civil Aviation Security and the 9/11 Attacks.” More specifically, Part I of the FAA monograph presents a detailed timeline of the hijackings, while Part II contains an analysis of “. . . the question of why the civil aviation system failed to stop the attacks [on September 11th] . . .”, through examination of the pre-9/11 world.

In response to your request, and in coordination with DOJ’s OIG, we investigated DOT’s role in the classification review of the FAA monograph, focusing primarily on FAA’s review and the timeliness of FAA’s response to DOJ. In the course of our investigation, we interviewed seven individuals and reviewed various documents and electronic messages.

Summary of Findings

In brief, we found that FAA completed its review in a timely and responsive manner within the timeframes that DOJ requested. During our review of emails and other documents, we found nothing to indicate any delay on FAA’s part in its review of the FAA monograph; the correspondence between DOJ and DOT references DOJ’s instructions for conducting classification review and a request that the FAA’s response meet DOJ’s timetable.

The monographs/staff reports on Terrorist Finance and Terrorist Travel—the first two monographs—were publicly issued, without redactions, on the day of the Commission’s sunset, August 21, 2004. In early August 2004, the Commission submitted the FAA monograph to DOJ for the purpose of ensuring any classified material would not be improperly released to the public. Specifically, FAA received DOJ’s request to review Part I of the FAA monograph on August 10, 2004. FAA returned its completed review of Part I to DOJ on August 12, 2004.

Then, on September 1, 2004, FAA received DOJ's request to review Part II of the FAA monograph. FAA completed its review and returned this portion of the monograph to DOJ on September 16, 2004, a day prior to DOJ's requested response date. On February 11, 2005, NARA publicly released an unclassified, but heavily redacted, version of the FAA monograph. We found no further involvement on the part of the FAA after their September 16, 2004, response to DOJ about Part II of the monograph.

We concluded that FAA was timely in its review and did not contribute to the delay in the monograph's release to NARA. Rather, in the course of our coordination with DOJ's OIG and as referenced in their report, we learned that the Transportation Security Administration's (TSA) review of the FAA monograph consumed more than three months of the approximate five-month period that passed between delivery of the FAA monograph to DOJ and its delivery to NARA.

Further, we found that none of the classified material contained in the FAA monograph, which DOJ submitted to FAA for review, was originally classified by FAA. Therefore, FAA had no authority to declassify any information in the monograph. However, the monograph was reviewed for the existence of classified information, along with "Sensitive Security Information" (SSI)¹. We found FAA's review consisted of its reviewer simply annotating in the margins of the monograph the classification level of the source information. Further, the reviewer also denoted in the margins any SSI material. Though FAA had originally designated some source information within the monograph as SSI, we found that the authority to change the designation of SSI contained in the FAA monograph was transferred to the Department of Homeland Security (DHS) with TSA in March 2003.

Details

The following includes a detailed chronology of events:

- DOT's Deputy General Counsel told us that in Spring 2004, she was asked by DOJ to designate a person to serve as DOT's representative in the pre-publication review of materials submitted by the 9/11 Commission. The Senior Advisor to the Chief Operating Officer of FAA's Air Traffic Organization was then designated as the representative (herein referred to as the FAA liaison). This same FAA executive had previously served as FAA's principal liaison to the Commission.
- On August 10, 2004, DOJ forwarded to the FAA liaison a draft of Part I of the FAA monograph via secure fax. DOJ requested that a classification review be completed

¹ The designation and disclosure of Sensitive Security Information is governed by the United States Code and Federal Regulations issued by the Departments of Homeland Security and Transportation.

by August 17, 2004, and welcomed any substantive comments regarding the actual report.

- FAA's liaison in turn reviewed Part I for the existence of classified materials and also forwarded it to a manager in FAA's Flight Standards Service, requesting the manager's review to ensure terminology used by the Commission was accurate. The manager returned Part I to the liaison with recommended changes in terminology (which, as referenced below, the liaison then incorporated in FAA's commentary back to DOJ).
- The FAA liaison told us she initially understood from DOJ that she would be receiving both Part I and Part II of the FAA monograph at the same time. However, on August 11, 2004, she received an email from DOJ advising that Part II would not be circulated for review at that time.
- On August 12, 2004, five days prior to DOJ's imposed deadline, the FAA liaison responded to DOJ advising that FAA had no classification issues with respect to Part I. She also transmitted to DOJ some commentary regarding specific sections of Part I.
- On September 1, 2004, DOJ transmitted to the FAA liaison, again via secure fax, Part II of the monograph². FAA was requested to identify classified material; annotate what portions would need to be redacted to render the document unclassified; and identify the classification level if material were to remain. DOJ requested that this review be completed by September 17, 2004.
- Because Part II dealt exclusively with civil aviation security issues, the FAA liaison forwarded the section to the FAA's Assistant Administrator for Security and Hazardous Materials for review. The FAA Deputy Assistant Administrator for Security and Hazardous Materials provided Part II of the monograph to an Intelligence Operations Specialist (IOS) in DOT's Office of Intelligence and Security, for classification review³.

² In his email message to the FAA liaison that day, the DOJ representative advised that DOJ had received the monograph in its entirety from the Commission on August 21, 2004, but delayed circulation of Part II for classification review based on a need for clarification regarding to whom DOJ should respond to, given that the 9/11 Commission was no longer in existence.

³ Prior to the creation of the Transportation Security Administration (TSA) in November 2001, the FAA had a 40-person intelligence-related unit that was responsible for making assessments about threats to aviation from intelligence data it received from agencies such as FBI and CIA. The IOS previously worked in this FAA unit.

- The IOS told us that her review of the monograph took her approximately three to four hours to complete in the course of one day. Her review entailed annotating in the margins of the document where she recalled the information in the monograph originated and its classification level. While reviewing the monograph, she also identified any information that, while not classified information, would be considered SSI. For example, in many cases the IOS wrote “S/NF” next to material that she recalled as being designated as classified secret with no foreign dissemination or “SSI” next to material she recalled as being designated SSI.
- We found that all classified information contained in the FAA monograph was classified by agencies other than the FAA. For example, much of the information contained in Part II of the monograph came from Daily Intelligence Summaries (DIS) prepared by FAA’s Office of Intelligence⁴. Because the FAA was not the classifying agency for any of the information in the DIS, it did not have authority to downgrade the classification of any information contained in the DIS.
- We also found that although FAA had originally applied the SSI designation to some of the material referenced in the monograph, the Deputy Assistant Administrator for Security and Hazardous Materials and the IOS told us that the authority to remove the SSI designation now rests with TSA as the custodian of that material.
- Upon completing her review of Part II of the monograph, the IOS returned it to FAA’s Assistant Administrator for Security and Hazardous Materials, who returned it to the FAA liaison.
- On September 16, 2004, a day before DOJ’s imposed deadline, the FAA liaison responded to DOJ. She forwarded via secure fax to DOJ only those pages of Part II about which the IOS had made comments.
- Based on the foregoing, we found that FAA conducted its classification review of the FAA monograph within DOJ’s requested timeframe; therefore, we concluded that FAA’s actions did not contribute to the delay in the monograph’s release to NARA. Additionally, we found no evidence to suggest that FAA, during the period September 16, 2004, when FAA responded to DOJ about Part II of the monograph, to January 28, 2005, when NARA received the declassified version of the monograph from DOJ, had any additional involvement in review of the monograph. Moreover, FAA was unable to play a significant role in the classification review because it was

⁴ DIS’ are summaries of the significant raw intelligence reports that FAA received in the prior 24 or 48 hours from the U.S. intelligence community (e.g., FBI, CIA, State Department). The overall classification level of the DIS was based upon the highest level of the source material that was contained within the DIS.

not the original classifying agency for any classified material contained in the monograph, thus it lacked authority to declassify any material in the monograph.

If I can answer any questions or be of further assistance, please feel free to contact me at 202-366-1959, or my Deputy, Todd J. Zinser, at 202-366-6767.

Sincerely,

A handwritten signature in black ink, appearing to read 'K M Mead', written in a cursive style.

Kenneth M. Mead
Inspector General